

(1988) 10 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1093 of 1987

Punjab State Small Industries Corporation Ltd. and Others	APPELLANT
Vs	
Shri Vijay Kumar Puri, Government Contractor and Others	RESPONDENT

Date of Decision : 04-10-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1990) 97 PLR 606

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : Vinod Sharma and D.V. Sharma, for the Appellant; Baldev Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Sehgal, J.—This revision petition is directed against the judgment dated 16-10-1985 passed by the learned Additional District Judge, Amritsar, whereby an appeal filed by the petitioner against the order dated 21-2-1985 of the learned Sub Judge 1st Class, Amritsar, has been dismissed.

2. The facts in brief are that respondent No. 1 agreed to execute certain work for the petitioner by virtue of an agreement in writing executed between them. It contained an arbitration clause. A dispute having arisen between the parties, the matter was referred to the arbitration of Shri J. S. Sodhi, Chief Engineer respondent No. 3 who entered upon the reference on 30th October, 1981. He made his award on 31st May, 1982. This award was challenged by respondent No. 1 in the trial Court by filing objections under Sections 30 and 33 of the Arbitration Act, 1940 (for short "the Act").

3. The learned trial Court vide its order dated 21-2-1985 allowed the objections of respondent No. 1 and set aside the award made by respondent No. 3. It, inter alia, held that the award had been made by respondent No. 3 after the statutory period of four months and was, therefore, invalid. The arbitrator had become

functus officio on the expiry of the stipulated period under clause (3) of the First Schedule to the Act. It was, further held that the award did not give any reason for the conclusion arrived at by the arbitrator. An appeal filed by the petitioner against the order of the learned trial Court, as already observed, was dismissed by the learned Additional District Judge who affirmed the finding recorded by the learned trial Court. This is how this revision petition has been filed,

4. I have heard the learned counsel for the parties. It has been contended on behalf of the petitioner that when the reference was pending before the Arbitrator the petitioner and respondent No. 1 had mutually agreed to the enlargement of time for making the award by the arbitrator. Writings to this effect executed by the parties are proxhibits R/1 and R/2 on the record. The parties had agreed that respondent No. 3 could make his award on or before 22th June. 1982. He submits that the award was made well before that date. His, next contention is, that even if it is held that the parties of their own could not enlarge the time for the "arbitrator to make the award Exhibits R/1 and R/2 ought to have favourably weighted with the learned trial court and the time for making the award should have been enlarged by exercising the power u/s 28(1) of the Act even after making of the award. This discretion has, however, not been exercised by the trial Court and the Appellate Court also declined to do so. His next submission is that the view taken by the Courts below that since arbitrator has not given reasons in support of the award the same is invalid, is against the established position of law.

5. The main reliance was placed by the learned counsel for both the parties with regard to the first contention on State of Punjab Vs. Hardy, . The Final Court after elaborately discussing the provisions of Sections 3 and 28 of the Act and clause (3) of the First Schedule to the Act has held that where the arbitration agreement provides for enlargement of time by mutual consent of the parties, the time can be so extended. Where, however, there is no provision to that effect in the arbitration agreement, it is always within the jurisdiction of the Court to extend or to refuse the time for making the award. It has been held that any mutual consent of the parties in writing or by conduct for enlargement of the time initially expressed in the original agreement is void and ultra vires the provisions of Section 28(1) of the Act. The judgment of the Final Court in R.C. Sharma Vs. The Chief Secretary, Government of Madhya Pradesh, Bhopal and Others, , has been explained and the position as stated above has been asserted once again.

6. In view of the judgment of the Final Court in Hardy's case (supra) no exception can be taken to the finding recorded by the Courts below that the award had been made by respondent No. 3 beyond the time stipulated in clause (3) of the First Schedule to the Act. No doubt it was within the discretion of the trial Court to have enlarged the time even after making of the award but it did not do so. The appellate Court declined to interfere with the discretion exercised by the learned trial Court in refusing to enlarge time. Learned Counsel for the

petitioner has urged before me that the discretion ought to be exercised for enlargement of the time. This prayer has been opposed by the learned counsel for respondent No. 1 who contends that the arbitrator for the first time heard the dispute on 15-4-1982 when the matter was adjourned to 17-5-1982. On the first date only one item of the claim made by respondent No. 1 had been discussed. The remaining items were to be taken up for consideration on the next date of hearing. Certain requirements were also to be fulfilled by respondent No. 1 on that date, Copies of certain documents from the court record were to be produced by respondent No. 1. He made a prayer for adjournment of the case of 17-5-1982 on the ground that the certified copies of the said documents from the record of the Court have not been made available. This prayer was declined by the arbitrator and without any further hearing the award was made by him. He, therefore, submits that the learned trial Court rightly did not exercise jurisdiction to enlarge the time. He submits that no prayer was made on behalf of the petitioner to that effect.

7. I am of the considered view that while exercising my revisional jurisdiction u/s 115 of the Code of Civil Procedure, I cannot interfere with the jurisdiction exercised by the Courts below unless I find that it has been perversely exercised. That in my view is not the position.

8. As regards the second ground which has prevailed with the Courts below that the award of the arbitrator is not supported by reasons I have no hesitation to hold that according to the law settled till date an arbitrator need not give any reason in support of his award. Learned counsel for the respondent has pointed out that the matter has been referred to a larger Bench by the Supreme Court and the question whether an arbitrator is required to give his reasons in support of the award is still to be debated upon.

9. I am, however, to abide by the law settled till date. I therefore, hold that the award has been wrongly set aside on the ground that the arbitrator did not assign reasons in support of the same.

10. However, the net result is that the orders of the Courts below whereby the award made by respondent No. 3 has been set aside remain intact in view of the decision rendered by me on the first point. The revision petition is, therefore, dismissed leaving the parties to bear their own costs.